

Entered on Docket  
November 24, 2009  
GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA



Signed: November 23, 2009

EDWARD D. JELLEN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re No. 09-46720 EDJ  
PAMELA CONLEY, Chapter 7  
\_\_\_\_\_  
Debtor. /

MEMORANDUM: MOTION FOR RECOVERY OF VEHICLE

On October 5, 2009, Pamela Conely, the above-named debtor, ("Debtor") filed a motion alleging that Travis Credit Union ("Creditor") improperly took possession of her property, a 2000 Mercedes Benz (the "Collateral"), in violation of the automatic stay of Bankruptcy Code § 362. A hearing was held November 19, 2009 at the court's request. John Mendonza appeared on behalf of Creditor. The Debtor appeared on her own behalf.

The court holds that the automatic stay of Bankruptcy Code § 362 was not in effect at the time Creditor took possession of the Collateral.

Because the debtor filed a Statement of Intention indicating that the debt secured by the Collateral "will be reaffirmed pursuant

Memorandum

1 to 11 U.S.C. § 524(c)" (see page 38 of debtor's petition, docket  
2 #1), the Debtor had thirty days following the first date set for the  
3 meeting of creditors to perform under the Statement of Intention, or  
4 the automatic stay of § 362 would terminate with respect to the  
5 Collateral. See § 521(a)(2)(B). In this case, the first date set  
6 for the meeting of creditors was August 18, 2009, giving the Debtor  
7 through September 17, 2009 to perform under the Statement of  
8 Intention. However, no reaffirmation agreement respecting the  
9 Collateral has been filed. Because the debtor did not perform her  
10 intention with respect to the collateral, the stay lifted by  
11 operation of law on September 18, 2009. According to Debtor's  
12 moving papers, Creditor took possession of the Collateral on  
13 September 22, 2009. The court holds under § 521(a)(2)(B) that no  
14 stay was in effect to prevent Creditor from taking possession of the  
15 Collateral when it did so.

16 The Debtor urges that the Statement of Intention filed with her  
17 petition was not authorized by her.<sup>1</sup> Unfortunately for the Debtor,  
18 even if this court were to find that the Statement of Intention is  
19 not valid, the stay would still not have been in effect at the time  
20 Creditor took possession of the Collateral. Bankruptcy Code §  
21 362(h)(1) states that the stay is terminated with respect to  
22 personal property of the estate if the debtor fails to file a  
23 Statement of Intention and, if retaining the property, to enter into

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24  
25 <sup>1</sup> This contention is belied by her assertions at the  
26 November 29, 2009 hearing that she would "love to" reaffirm the  
obligation.

1 a reaffirmation agreement within the time set by § 521(a)(2). In  
2 other words, regardless of whether or not Debtor indicated an intent  
3 to reaffirm the obligation secured by the Collateral in her  
4 Statement of Intent, she nevertheless was required to reaffirm the  
5 obligation by September 18, 2009 if she wished to retain the  
6 Collateral. Because the Debtor did not do so, the stay lifted by  
7 operation of law, and did not prevent Creditor from taking  
8 possession of the Collateral. The court holds under § 362(h)(1)  
9 that no stay was in effect to prevent Creditor from taking  
10 possession of the Collateral when it did so.

\*\*END OF ORDER\*\*

COURT SERVICE LIST

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